

1 Joshua B. Swigart, Esq. (SBN: 225557)  
 josh@westcoastlitigation.com  
 2 Robert L. Hyde, Esq. (SBN: 227183)  
 bob@westcoastlitigation.com  
 3 **Hyde & Swigart**  
 4 411 Camino Del Rio South, Suite 301  
 San Diego, CA 92108-3551  
 5 Telephone: (619) 233-7770  
 6 Facsimile: (619) 297-1022

7 Attorneys for the Plaintiff

FILED  
 09 OCT -6 PM 2:22  
 CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 BY: *ey* DEPUTY

10 **UNITED STATES DISTRICT COURT**  
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

<p>13 Michael Boyd</p> <p>14 Plaintiff,</p> <p>15 v.</p> <p>16 Jaimie Baker dba Baker Recovery</p> <p>17 Services</p> <p>18 Defendant.</p>	<p>Case Number: <b>09 CV 2202 DMS JMA</b></p> <p><b>Complaint For Damages</b></p> <p><b>Jury Trial Demanded</b></p>
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21 **INTRODUCTION**

- 22 1. The United States Congress has found abundant evidence of the use of
- 23 abusive, deceptive, and unfair debt collection practices by many debt
- 24 collectors, and has determined that abusive debt collection practices
- 25 contribute to the number of personal bankruptcies, to marital instability, to the
- 26 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
- 27 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
- 28 "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

**ORIGINAL**

*QR*

1 to insure that those debt collectors who refrain from using abusive debt  
2 collection practices are not competitively disadvantaged, and to promote  
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system  
5 and grantors of credit to consumers are dependent upon the collection of just  
6 and owing debts and that unfair or deceptive collection practices undermine  
7 the public confidence that is essential to the continued functioning of the  
8 banking and credit system and sound extensions of credit to consumers. The  
9 Legislature has further determined that there is a need to ensure that debt  
10 collectors exercise this responsibility with fairness, honesty and due regard  
11 for the debtor's rights and that debt collectors must be prohibited from  
12 engaging in unfair or deceptive acts or practices.

13 3. Michael Boyd, (Plaintiff), through Plaintiff's attorneys, brings this action to  
14 challenge the actions of Jaimie Baker dba Baker Recovery Services,  
15 ("Defendant"), with regard to attempts by Defendant to unlawfully and  
16 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused  
17 Plaintiff damages.

18 4. Plaintiff makes these allegations on information and belief, with the exception  
19 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which  
20 Plaintiff alleges on personal knowledge.

21 5. While many violations are described below with specificity, this Complaint  
22 alleges violations of the statutes cited in their entirety.

23 6. Unless otherwise stated, Plaintiff alleges that any violations by Defendant  
24 were knowing and intentional, and that Defendant did not maintain  
25 procedures reasonably adapted to avoid any such violation.

#### 26 JURISDICTION AND VENUE

27 7. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §  
28 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

1 8. This action arises out of Defendant's violations of the Fair Debt Collection  
2 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair  
3 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32  
4 ("RFDCPA").

5 9. Because Defendant does business within the State of California, personal  
6 jurisdiction is established.

7 10. Venue is proper pursuant to 28 U.S.C. § 1391.

8 **PARTIES**

9 11. Plaintiff is a natural person who resides in the City of San Diego, County of  
10 San Diego, State of California.

11 12. Defendant is located in the City of Santa Ana, the County of Orange, and the  
12 State of Minnesota.

13 13. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer"  
14 as that term is defined by 15 U.S.C. § 1692a(3).

15 14. Defendant is a person who uses an instrumentality of interstate commerce or  
16 the mails in a business the principal purpose of which is the collection of  
17 debts, or who regularly collects or attempts to collect, directly or indirectly,  
18 debts owed or due or asserted to be owed or due another and is therefore a  
19 debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

20 15. Plaintiff is a natural person from whom a debt collector sought to collect a  
21 consumer debt which was due and owing or alleged to be due and owing from  
22 Plaintiff, and is a "debtor" as that term is defined by California Civil Code §  
23 1788.2(h).

24 16. Defendant, in the ordinary course of business, regularly, on behalf of himself,  
25 herself, or others, engages in debt collection as that term is defined by  
26 California Civil Code § 1788.2(b), is therefore a debt collector as that term is  
27 defined by California Civil Code § 1788.2(c).

HYDE & SWIGART  
San Diego, California

1 17. This case involves money, property or their equivalent, due or owing or  
2 alleged to be due or owing from a natural person by reason of a consumer  
3 credit transaction. As such, this action arises out of a consumer debt and  
4 "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

5 **FACTUAL ALLEGATIONS**

6 18. At all times relevant to this matter, Plaintiff was an individual residing within  
7 the State of California.

8 19. At all times relevant, Defendant conducted business within the State of  
9 California.

10 20. Sometime before September 14, 2009, Plaintiff is alleged to have incurred  
11 certain financial obligations.

12 21. These financial obligations were primarily for personal, family or household  
13 purposes and are therefore a "debt" as that term is defined by 15 U.S.C.  
14 §1692a(5).

15 22. These alleged obligations were money, property, or their equivalent, which is  
16 due or owing, or alleged to be due or owing, from a natural person to another  
17 person and are therefore a "debt" as that term is defined by California Civil  
18 Code §1788.2(d), and a "consumer debt" as that term is defined by California  
19 Civil Code §1788.2(f).

20 23. Sometime thereafter, but before September 14, 2009, Plaintiff allegedly fell  
21 behind in the payments allegedly owed on the alleged debt. Plaintiff currently  
22 takes no position as to the validity of this alleged debt.

23 24. Subsequently, but before September 14, 2009, the alleged debt was assigned,  
24 placed, or otherwise transferred, to Defendant for collection.

25 25. On or about September 14, 2009, Defendant filed a lawsuit against Plaintiff in  
26 the Superior Court of California, County of Orange, Case No.  
27 30-2009-00284114-CL-CL-WJC, for the amount of \$5,439.92. Defendant's  
28

1 prayer for relief also includes it be awarded interest at the rate of ten (10)  
2 percent per annum from December 28, 2007, attorney's fees and other relief.

3 26. However, at no time has Plaintiff lived in Orange County, entered into any  
4 contract with Defendant in Orange County, or be subjected to enforcement of  
5 any contract in Orange County.

6 27. Because Defendant brought legal action in a location other than where the  
7 alleged contract was signed or where Plaintiff resides, it violated 15 U.S.C. §  
8 1692i(a)(2). Because Defendant violated 15 U.S.C. § 1692i(a)(2), it also  
9 violated Cal. Civ. Code § 1788.17.

10 28. In bringing the aforementioned lawsuit, Defendant failed to conduct a diligent  
11 investigation prior to the filing of the lawsuit, thereby violating its  
12 professional duty, and the requirements set forth in the Federal Rules of Civil  
13 Procedure.

14 29. The filing of the aforementioned lawsuit by Defendant also constituted an  
15 attempt to collect an amount not authorized by the agreement creating the  
16 debt or permitted by law in violation of 15 U.S.C. § 1692f(1). Because  
17 Defendant violated 15 U.S.C. § 1692f(1), it also violated Cal. Civ. Code §  
18 1788.17.

19 30. Defendant's actions constituted a false, deceptive, or misleading  
20 representation or means in connection with the collection of the alleged debt.  
21 As such, this action by Defendant violated 15 U.S.C. §§ 1692e and  
22 1692e(10), and because this action violated the language in 15 U.S.C. §§  
23 1692e and 1692e(10), it also violated Cal. Civ. Code § 1788.17.

24 31. Before September 14, 2009, Plaintiff was personally with the Summons and  
25 Complaint in San Diego County.

26 32. Plaintiff has been and continues to be harmed in defending the  
27 aforementioned frivolous and improperly filed lawsuit.

28 //

**COUNT I****FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)****15 U.S.C. §§ 1692 ET SEQ.**

33. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

34. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

35. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

**COUNT II****ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)****CAL. CIV. CODE §§ 1788-1788.32**

36. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

37. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA, including but not limited to each and every one of the above-cited provisions of the RFDCPA, Cal. Civ. Code §§ 1788-1788.32

38. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

39. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: October 5, 2009

**Hyde & Swigart**

By: \_\_\_\_\_  
Joshua B. Swigart  
Attorneys for Plaintiff

HYDE & SWIGART  
San Diego, California

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Michael Boyd

## DEFENDANTS

Jaimie Baker dba Baker Recovery Services

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Orange  
(IN U.S. PLAINTIFF CASES, USE THE LOCATION OF THE LAND INVOLVED.)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde &amp; Swigart

411 Camino Del Rio South Suite 301, San Diego, CA 92108

619.233.7770

Attorney of Record

09 CV 2202 DMS JMA

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 1692 (used)

Brief description of cause:  
FDCPA

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

75,000

CHECK YES only if demanded in complaint:

JURY DEMAND:

Yes ☒ No ☐

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/06/09

FOR OFFICE USE ONLY

RECEIPT #

5985

AMOUNT

350.00

APPLYING IFP

JUDGE

MAC UPD

ORIGINAL

MS 10/6/09

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS005985  
Cashier ID: msweaney  
Transaction Date: 10/06/2009  
Payer Name: HYDE AND SWIGART ATT AT LAW

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CIVIL FILING FEE  
For: BOYD V BAKER RECOVERY SVCS  
Case/Party: D-CAS-3-09-CV-002202-001  
Amount: \$350.00

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CHECK  
Check/Money Order Num: 3440  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.